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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Implementation of the
Local Competition Provisions
of the Telecommunications Act of 1996

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CC Docket No. 96-98

REPLY OF MCI WORLDCOM, INC.
TO OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION AND CLARIFICATION

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**REPLY OF MCI WORLDCOM, INC.
TO OPPOSITIONS TO
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In their Oppositions to Petitions for Reconsideration and Clarification of the Third Report and Order filed by requesting carriers in the above-captioned proceeding,¹ the incumbent local exchange carriers (ILECs) provide no credible arguments or relevant empirical evidence. They simply repeat their mantra that access to unbundled network elements (UNEs) should be restricted. Frequently they attempt to characterize legitimate carrier requests to interconnect in a fashion that allows them to efficiently utilize UNEs as a violation of the Eighth Circuit finding that “subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC’s existing network — not to a yet unbuilt superior one.”² The Commission should reject these arguments.

¹ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Released November 5, 1999 (“Third Report and Order”).

² This reaches the peak of absurdity when GTE at p. 5 of its Opposition claims that “With the SPOI [single point of interconnection], the ILEC would be creating new elements and giving the CLEC access to the network which the ILEC itself does not have.” Yet the SPOI is exactly the method that ILECs have used for a century to interconnect with adjacent ILECs.

I. The Commission should clarify that ILECs must provide access to UNEs in an efficient fashion that does not impair requesting carriers' ability to offer services.

In the Third Report and Order, the Commission identified UNEs that ILECs must provide either under all circumstances or with certain exceptions. In the four months that have elapsed since the Order was released, it has become clear that certain clarifications of the Order are necessary because the ILECs often are evading the Order by making these UNEs available only in a fashion that does not allow requesting carriers to use them efficiently, thereby impairing the requesting carriers' ability to offer services. This noncompliance has taken several forms. First, ILECs have required requesting carriers to collocate in order to obtain loop-transport combinations (EELs), thereby imposing costs and delays that render it infeasible to use EELS in many cases. Next, they have refused to allow requesting carriers to "commingle" facilities purchased as UNEs with compatible facilities purchased as "services" out of access tariffs, thereby forcing requesting carriers to use two parallel, inefficient networks instead of one, again rendering it infeasible to use EELs in many situations. They also have provided "solutions" to the problem of requesting carriers using their own OS/DA platform when using unbundled switching that require the requesting carrier to deploy inefficient overlay networks. These ILEC actions speak louder than the words in their Oppositions. The Commission should clarify, both generically and for specific situations, that ILECs are not in compliance with the law when they provide UNEs in an inefficient fashion that impairs the ability of requesting carriers to provide telecommunications services.

As has been the case since the passage of the 1996 Act, the ILEC's most obvious effort to undermine competition through UNEs involves attempts to impose needless collocation

requirements. Thus, SBC (Opposition at pp. 44-45) mischaracterizes both the Third Report and Order and the Supplemental Order as making “clear that ILECs need only convert to UNEs qualifying loop/transport combinations that terminate in a collocation space.” In fact, the opposite is true; in the Third Report and Order (at ¶ 482) the Commission noted with disapproval that “incumbent LECs have refused to provide access to network elements so that competitors could combine them, except in situations where competitive LECs have collocated in the incumbent’s central offices.”

By the same token, the ILECs improperly defend their right to force CLECs to build multiple inefficient, overlapping networks. Thus, SBC (Opposition at p. 43) attacks commingling as

a novel form of line sharing that has never been ordered. The Commission has required ILECs to provide unbundled access to loops and transport facilities, including DS-1s and DS-3s; it has never required ILECs to provide unbundled access to individual channels on those facilities.

But “commingling” is simply a way for CLECs to use leased network elements efficiently to carry all of their telecommunications traffic. With the commingling of circuits, the transport facility would remain dedicated to the use of a single carrier; it is not line sharing at all, which involves the sharing of a single line by multiple carriers.

Nor is there any merit to the SBC claim (Opposition at p. 44) that commingling “would open up the floodgates to special access conversions.” SBC appears to assume that commingling would necessarily entail a change in the price of the DS-3. This is not the case; conversion of these circuits does not necessarily require any change to the price of the DS-3 (for which the requesting carrier has already paid). The price of the DS-3 could be “ratcheted” downward as

individual DS-1s are converted to unbundled network element pricing, so that requesting carriers are paying UNE rates for local circuits and access rates for access circuits. However, the pricing is distinct from the preliminary question of “commingling” itself. Thus, even if requesting carriers were required to pay unratcheted access rates for DS-3s that include UNE DS-1s, they still should be permitted to commingle all of their traffic on their leased access lines.³

With respect to access to OS/DA, the ILECs continue to exploit the ambiguity created when the Commission mentioned a proposed BellSouth “solution” to a problem caused by incompatibilities between the ILEC networks that use a legacy Bell System MOSS signaling protocol and the competitive local exchange carrier (CLEC) networks that use the more current Feature Group D signaling protocol. The problem is that the proposed solution, while allowing CLECs to connect to their own OS/DA platform (or a third party OS/DA platform) when using the ILECs’ unbundled switching element, renders such a connection infeasible because it requires the CLECs to construct a complete network overbuild. More generally, the large ILECs either have failed to provide any technical solution or have devised a technical “solution” that forces the requesting carriers to deploy inefficient overlay networks, in either case impairing the carriers’ ability to offer services.

MCI WorldCom has been through the gauntlet of ILEC promises associated with the provisioning of OS/DA. However, when time has come to implement such services, we have

³ SBC also asserts (Opposition at p. 44) that since commingling is not contemplated by a Bell Atlantic *ex parte* that was cited in a footnote in the Supplemental Order, it cannot be reconciled with the Order. The Commission should reject this interpretive sleight-of-hand. The footnote makes no mention of commingling one way or the other. It references Bell Atlantic’s *ex parte* as one example of how to identify a significant local component of network traffic. It cannot plausibly be read to endorse all of the conditions described in Bell Atlantic’s letter.

found that either (1) the ILEC excludes local operator services (O-, O+, 10 digit local, 411, 555-1212, and HNPA-555-1212) and includes only interexchange carrier OS/DA traffic, or (2) the ILEC requires dedicated trunking from every end office to the MCI WorldCom platform, or (3) the ILEC requires dedicated trunking both to a foreign central office from every end office and between that foreign central office and the MCI WorldCom platform. By contrast, the efficient arrangement is to allow MCI WorldCom to elect, based on traffic volume, to pick up the traffic at an end office or to have the call routed over the ILEC's shared transport to an access tandem where MCI WorldCom would pick up the traffic. This would allow the OS/DA traffic to traverse the same trunking routes that access traffic traverses, with the only difference being that the OS/DA traffic would be rated at TELRIC rates. This routing would allow MCI WorldCom (and any other carrier) to avoid building an extra overlay network that would be inefficient given the relatively low level of OS/DA traffic relative to scale economies.

Given this state of affairs, a rule that states that ILECs who have customized routing may deny CLECs access to unbundled OS/DA is inadequate. Until such time as an ILEC's proposed "solution" is tested and implemented — and demonstrated not to impair the ability of the requesting carrier to offer telecommunications services — the ILEC should continue to provide OS/DA (unbranded or CLEC-branded, at the CLEC's choice) to UNE-platform customers at TELRIC rates, following the example of Bell Atlantic in New York, Pennsylvania, Massachusetts, and New Jersey, and Southwestern Bell in Texas.

II. The Commission should replace the overly broad and administratively impractical four-line exception for the unbundled local switching element with a DS-1 exception.

The record in this proceeding demonstrates that, in locations with very large amounts of

traffic (downtown business districts in the largest MSAs), requesting carriers are impaired in their ability to serve residential and smaller business customers if denied access to unbundled local switching, but may not be impaired in their ability to serve larger business customers. In the Third Report and Order, the Commission without adequate record support chose four lines as the “break-off” point between larger and smaller business customers. Subsequently, a number of requesting carriers petitioned for reconsideration, providing empirical support for a break-off point of DS-1 service.

In their Oppositions to those petitions, SBC and Bell Atlantic provided data they claim demonstrate that CLECs can and do serve substantial numbers of customers with fewer than four lines without using unbundled switching and that the four-line break-off point is reasonable. SBC states (at p. 4) that it “has received tens of thousands of cutover orders on behalf of [DS-0] customers” and “about 75% of the lines cutover by SWBT were for customer locations with 7 or fewer lines.” Bell Atlantic states (at p. 11) that “more than 78 percent of its [50,891] coordinated cutover (hot cut) orders [over the last six months] involve fewer than four lines.” These claims are not persuasive.

SBC and Bell Atlantic are the ILECs for far more than half the U.S. population, covering most of the largest metropolitan areas in the country. Within the SBC and Bell Atlantic serving areas, CLECs have deployed many switches to serve larger business customers in New York, Philadelphia, Boston, Washington, D.C., Baltimore, Pittsburgh, Houston, Dallas, Los Angeles, San Francisco, Chicago, Detroit, and Cleveland, as well as some switches in second tier and even a few third tier cities. That a few scattered CLECs have used their switches to serve, in total, “tens of thousands” of smaller business or residential customers out of the tens of millions

scattered across those two giants' service areas demonstrates only that in some narrow circumstances CLECs can serve some smaller customers using their own switches. It does not demonstrate that CLECs in general are not impaired in their ability to serve smaller customers absent access to unbundled switching. Moreover, although CLECs are impaired in their ability to serve smaller customers, one still should expect most cutover orders to involve a small number of lines for the simple reason that the overwhelming majority of customers — perhaps 99 percent — have seven or fewer lines, and probably 95+ percent have fewer than four lines.⁴

MCI WorldCom and other requesting carriers have described the practical problems with the four line break-off point. Counting lines will inevitably lead to disputes as customers add or subtract lines with the business cycle or seasonally. To avoid disputes and delays, a bright-line test is needed that is easy to identify and administer. The DS-1 cutoff level is easy to identify. Customers are less likely to shift back and forth between a single DS-1 and multiple DS-0s than they are to add or subtract DS-0 lines.⁵

III. The Commission should reconsider its decision not to require ILECs to provide packet switching and DSLAMs except in limited circumstances.

⁴ In addition, given the service disruption created by cutovers, customers frequently choose to cut over only a small number of lines at a time, in order to maintain some communications capability at all times. Thus, an order for fewer than four loop cutovers may not represent a customer with fewer than four lines.

⁵ BellSouth argues that:
The Commission should leave the threshold where it is, if only because, as MCI WorldCom points out, the cross-over point for moving to DS1 service is rapidly sinking below 8 lines toward the current threshold. In fact, using xDSL technology, carriers can easily serve an 8-line customer over a single copper loop, suggesting that the Commission threshold is too high. (BellSouth Opposition at p. 4)
But this argues for using the DS-1 as a market-driven bright-line break point. Why implement a rule that will create administrative nightmares if, in any case, the market itself is driving the bright line DS-1 break point in the direction preferred by the ILECs?

In its Petition, MCI WorldCom showed that the Commission's determination that making unbundled packet switching available will impede ILEC development of advanced facilities and services was contradicted by empirical evidence cited by the Commission, itself, in the Third Report and Order. Although an ILEC may not be able as easily to exploit its dominant position if it is required to provide unbundled access to packet switching, it will still be able to charge its wholesale customers a cost-based rate, including a reasonable risk-adjusted return on its investment. It would not give up this profitable business and foreclose itself from the advanced services retail market by failing to deploy DSL technology quickly enough to minimize cable company first mover advantages.

In their Oppositions, the ILECs made no attempt to respond to the evidence in the record.⁶ They simply paid obeisance to "economic theory" in the abstract (SBC at pp. 16-17; GTE at p. 18; US WEST at p. 11), while disregarding what that theory would have to say about ILEC incentives when faced with powerful competition from the cable industry. A theory taking that into account would be strongly corroborated by the relevant empirical evidence, which as the Commission itself conceded at paragraph 315 of the Third Report and Order, indicates that the market pressures on ILECs to deploy DSL technology far exceed any deterrence that might be created by requiring ILECs to unbundle packet switching and DSLAMs. Referring to its investment in Project Pronto, SBC claims that

this investment demonstrates how the *lack* of an unbundling obligation promotes the deployment of advanced capabilities by ILECs. The Commission has never required ILECs to unbundle their packet switches. And SBC did not announce Project Pronto until

⁶ Nor did the ILECs attempt to refute the Commission's finding that CLECs will be materially impaired in their ability to provide advanced services to residential customers without access to unbundled packet switching and DSLAMs.

December 30, 1999 — three months after the UNE Remand Order was adopted. Opposition at p. 17.

But in fact, Project Pronto was planned, and an extremely detailed announcement made, on October 18, 1999,⁷ prior to the release of the UNE Remand Order. Moreover, according to that announcement, “Earlier this year, SBC announced its plans to deploy DSL in more than 500 central offices. The company will meet this commitment in early November, making DSL service available to nearly 10 million customer locations in Texas, California, Nevada, Missouri and Arkansas.” The ILECs are deploying DSL far more rapidly and ubiquitously than the CLECs. The Commission, relying in part on very preliminary data showing the contrary, got it wrong when it concluded that ILECs needed protection to invest. It is the CLECs that need access to facilities if they are to compete successfully in the market for broadband services.

IV. The Commission should clarify that ILECs must perform all the cross-connections and other activities required for CLECs to be able to line share using either UNE-loop or UNE-platform.

In its Petition, MCI WorldCom requested clarification that ILECs must perform all the cross connections and other activities required for CLECs to be able to line share using either UNE-loop or UNE-platform. SBC’s response (Opposition at p. 26) is that the “claim that the incumbent should provide line-shared loops for CLECs ... violates the Eighth Circuit’s decision that “subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC’s existing network — not to a yet unbuilt superior one.” But as shown in attached Diagrams 1 through 8, the ILEC activities that would be required to provide line sharing via UNE-loop or via UNE-platform are exactly the same activities that ILECs currently perform to provide services to

⁷ [Http://www/sbc.com/News_Center/Article.html?query_type=article&query=1999101](http://www/sbc.com/News_Center/Article.html?query_type=article&query=1999101)

end users themselves or as part of a line sharing arrangement with a CLEC when they provide the voice services. Thus, the ILECs simply are refusing to perform the basic interconnection required for requesting carriers to access unbundled elements.

V. The Commission should require ILECs to provide CLECs all relevant data on remote terminating points and other facilities needed to make subloop unbundling operational.

In the Oppositions, some ILECs argue that identifying information about subloop unbundling that ILECs must give CLECs is properly addressed through negotiation and arbitration (SBC at p. 48; Bell Atlantic at p. 17); others argue that CLECs should have access only to the same information made available to the ILECs' retail operations (GTE at p. 21, n. 57). But CLECs have not been able to reach appropriate resolution through negotiation, and a national rule — rather than a patchwork of state arbitration decisions — is needed for this national issue so that the procompetitive result will be promptly achieved. And the information provided cannot be limited to the information needed for the ILECs' own retail offerings, as that artificially limits the information available to that which the ILEC views as beneficial to its own business plans, and gives ILECs an unfair first-mover advantage whenever their retail arms decide to market a new product requiring access to additional loop information.

VI. The Commission should heed Teligent's suggested modifications of the BellSouth definitions concerning NIDs.

MCI WorldCom agrees with BellSouth that the Commission's definitions relating to NIDs potentially create confusion. However, as Teligent shows in its Opposition, the BellSouth proposal itself would create confusion that could be abused by ILECs to deny requesting carriers access to NIDs. MCI WorldCom believes that if the Commission were to accept the BellSouth

proposal, it should modify that proposal according to the Teligent suggestions.

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Diagram 1 - ILEC providing voice and other low-speed services itself OR ILEC providing voice UNE-platform so that a requesting carrier can offer voice and other low speed services

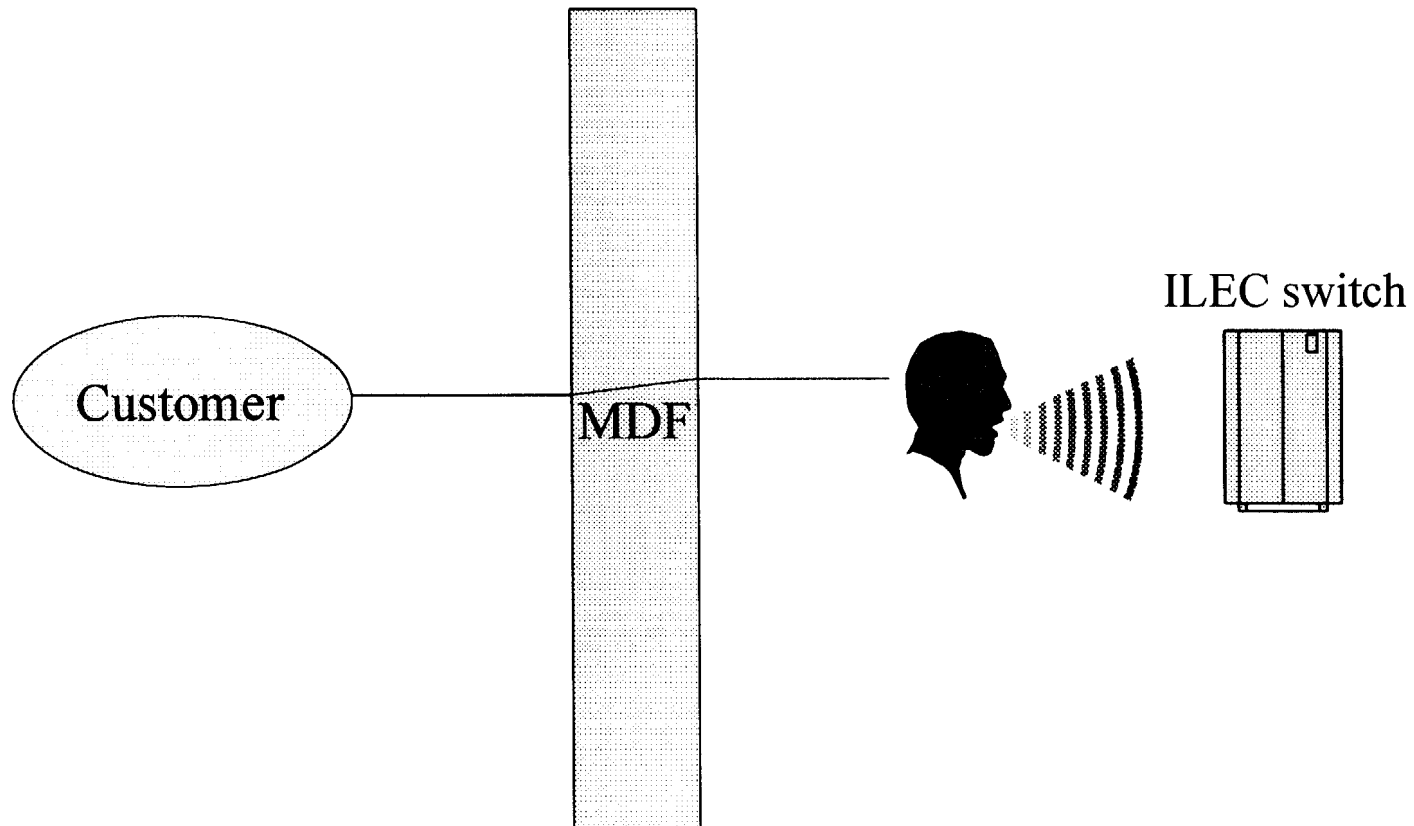


Diagram 2 - ILEC providing voice and advanced services itself

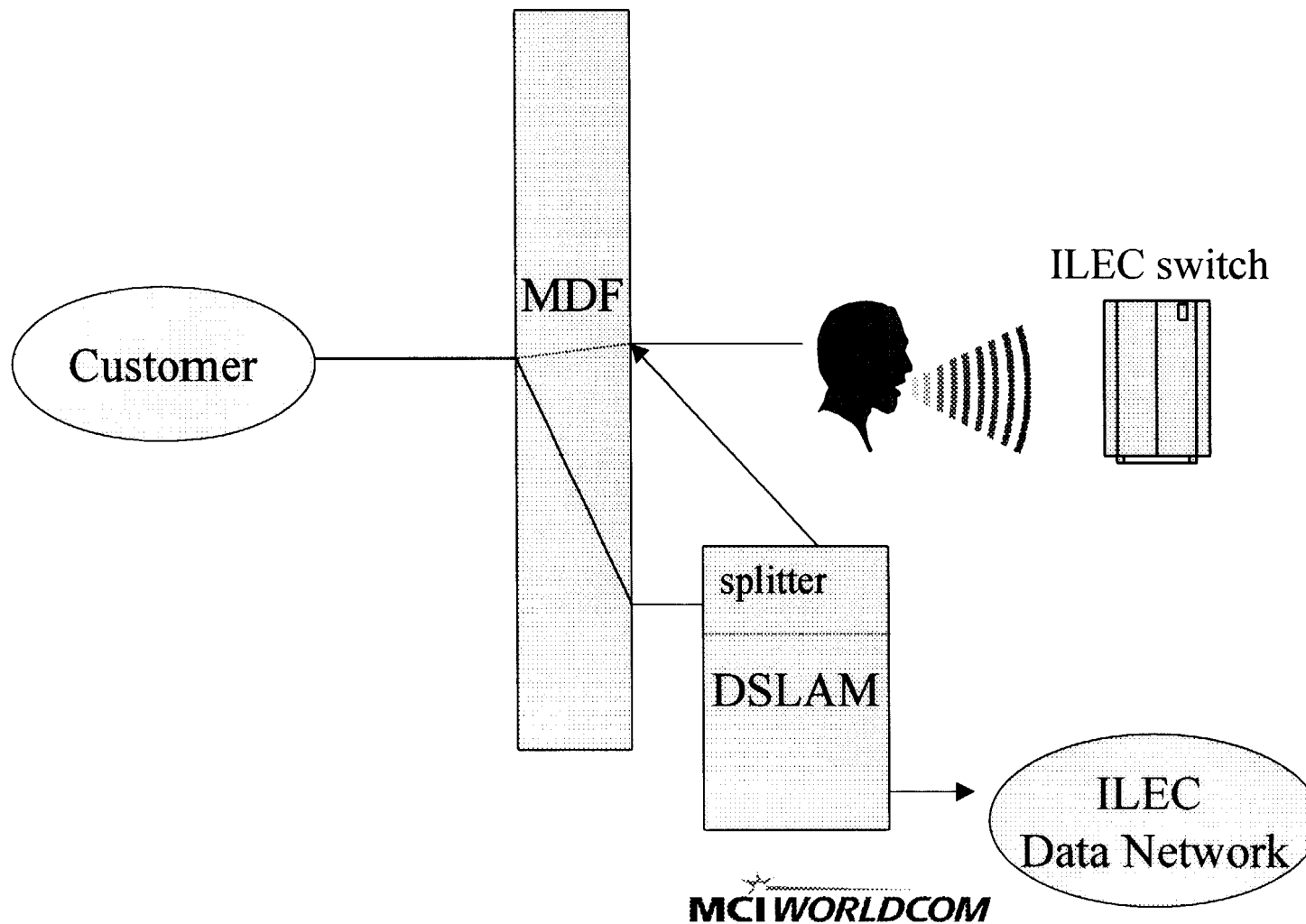


Diagram 3 - Line sharing by an ILEC and a CLEC, where the CLEC provides the splitter and the DSLAM.

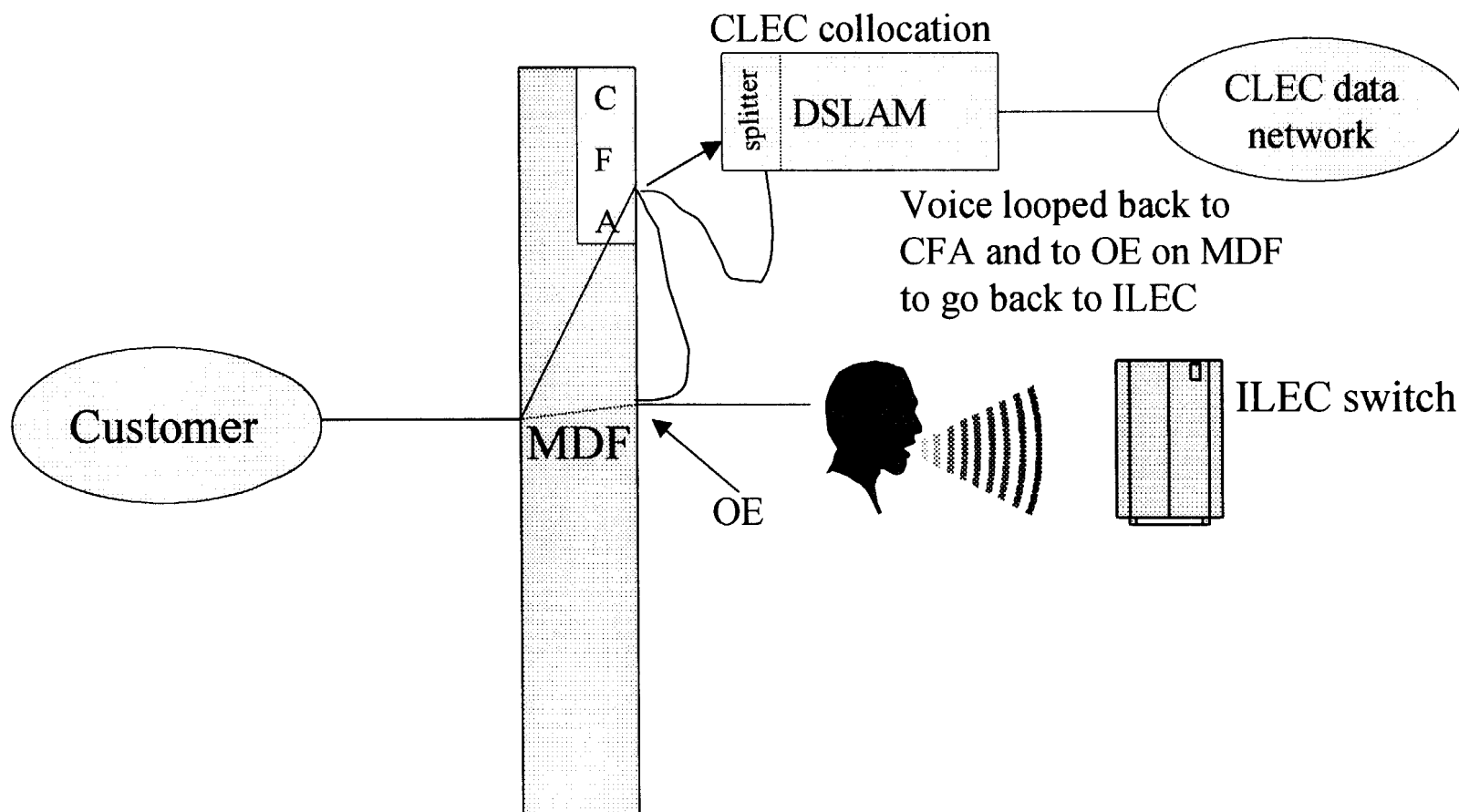


Diagram 4 - Line sharing by an ILEC and a CLEC, where the CLEC provides the DSLAM and the ILEC provides the splitter

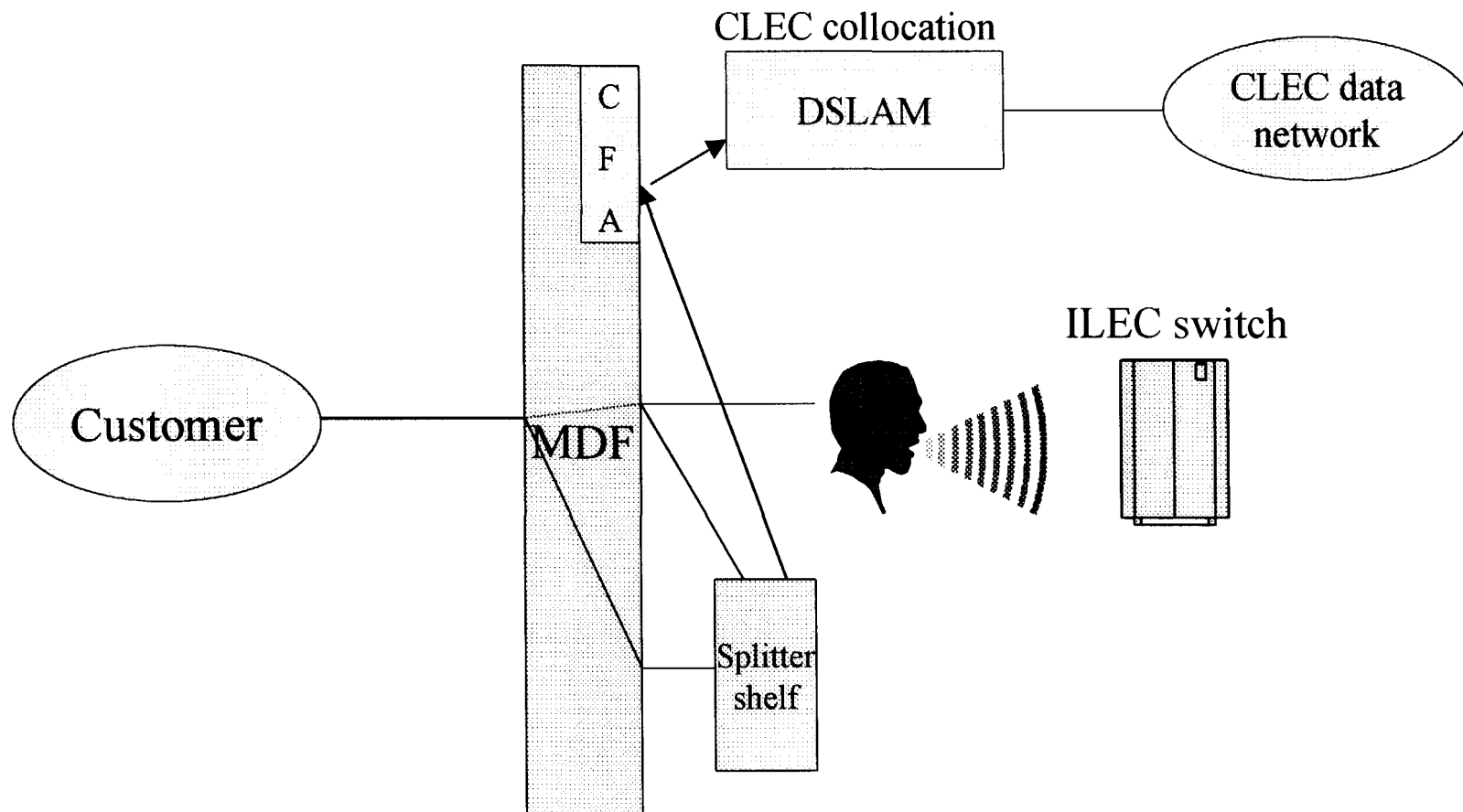


Diagram 5 - CLEC purchase of UNE-Loop to provide advanced services only

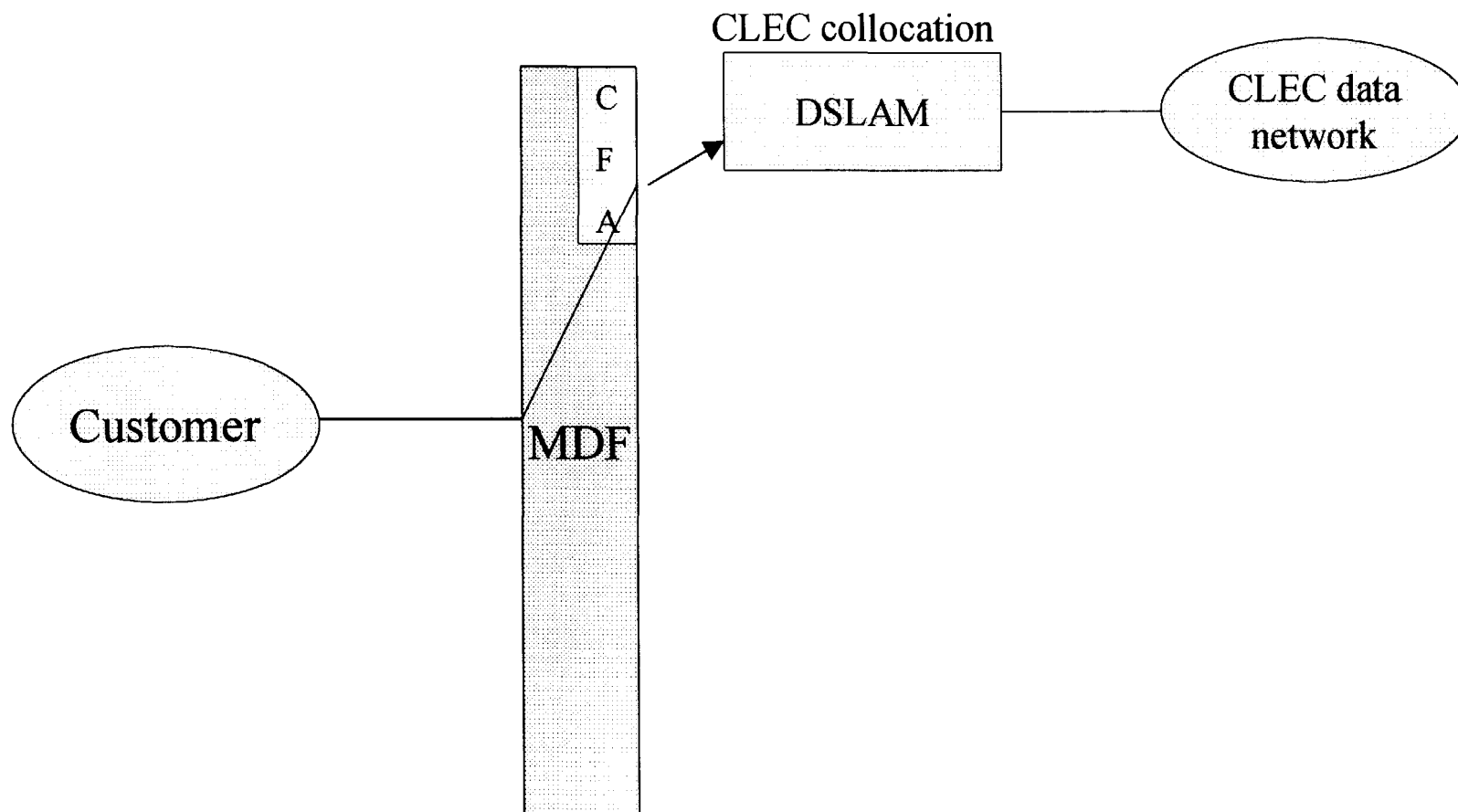


Diagram 6 - CLEC purchases UNE-Loop to provide voice and advanced services itself OR CLEC-to-CLEC line sharing: CLEC-1 purchases UNE-Loop, CLEC-2 provides splitter and DSLAM, with voice traffic routed to CLEC-1 voice network and data traffic routed to CLEC-2 data network

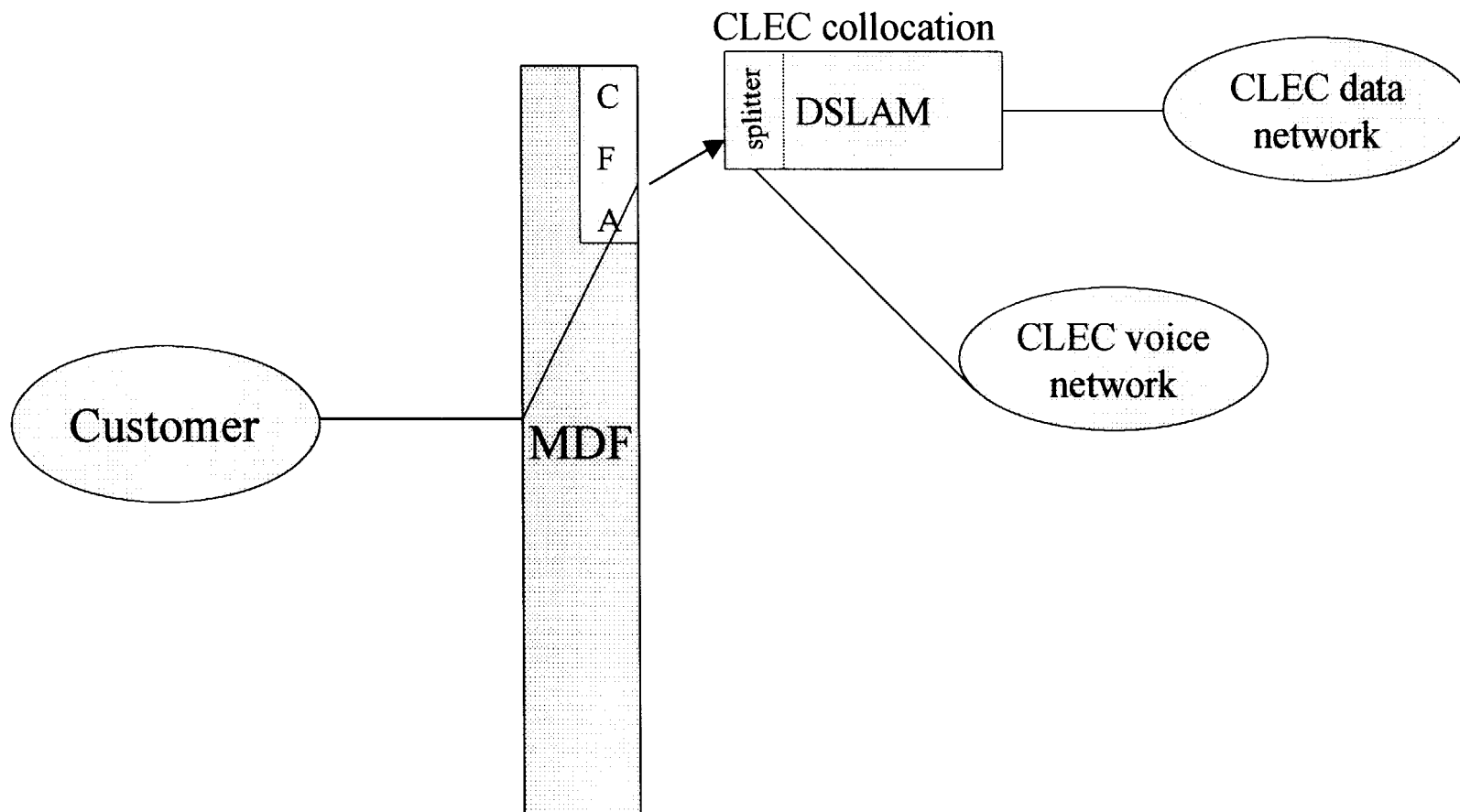


Diagram 7 - CLEC providing both voice and advanced services over a UNE-Platform without use of an ILEC splitter OR CLEC-to-CLEC line sharing: CLEC-1 purchases UNE-Platform, CLEC-2 provides splitter and DSLAM, with voice traffic routed back to ILEC voice switch and data traffic routed to CLEC-2 data network

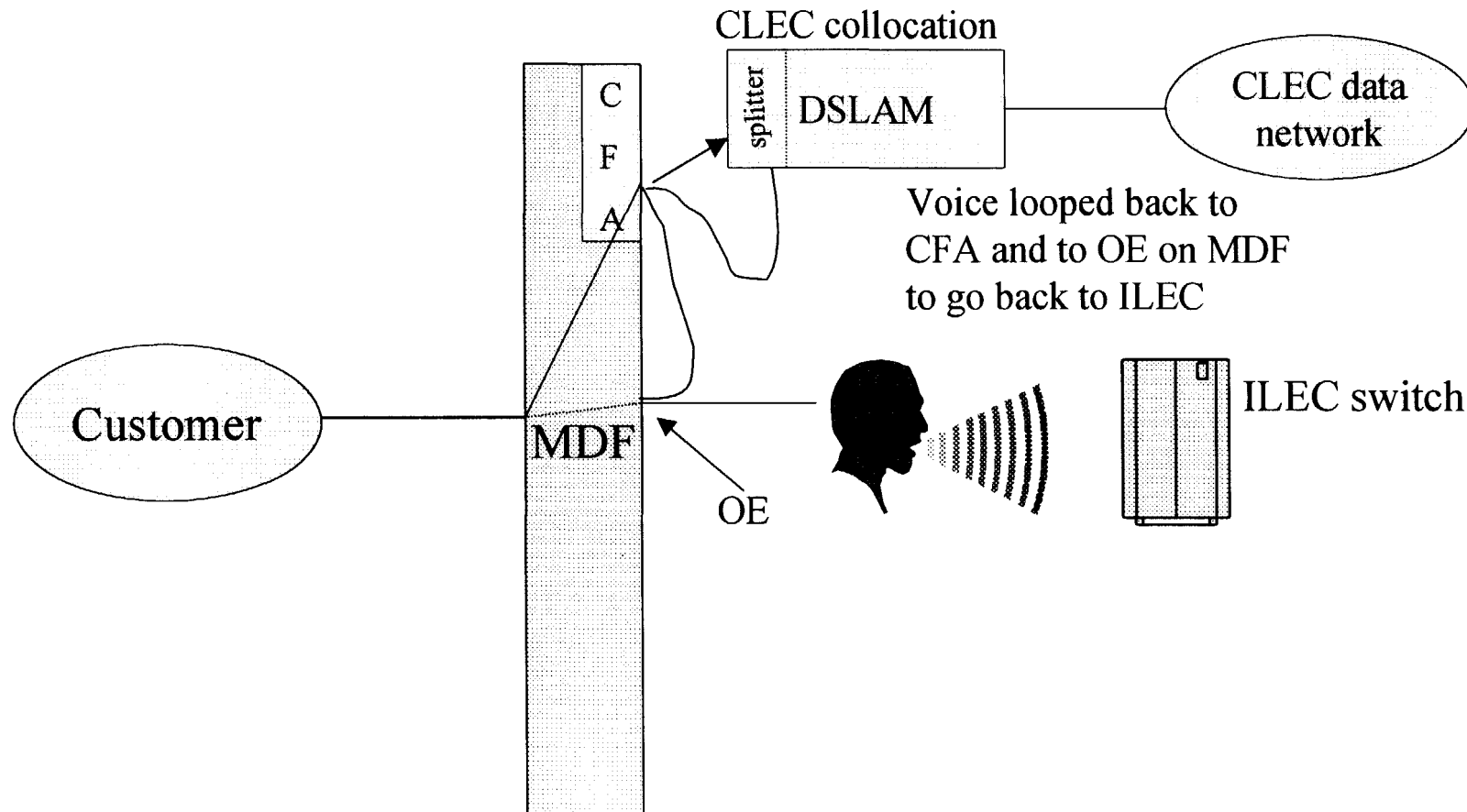
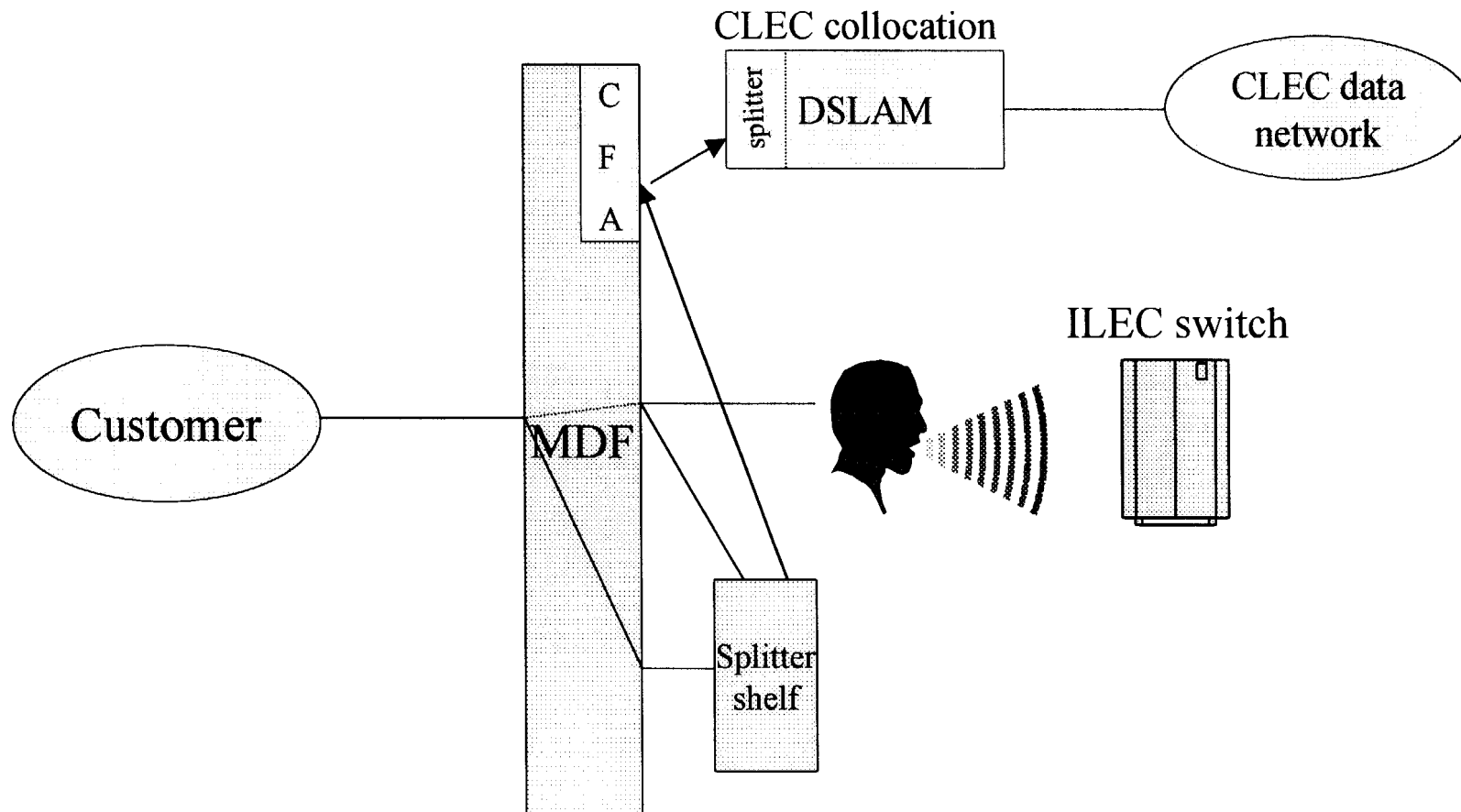


Diagram 8 - CLEC providing both voice and advanced services over a UNE-Platform with ILEC providing splitter OR CLEC-to-CLEC line sharing: CLEC-1 purchases UNE-Platform, ILEC provides splitter, with voice traffic routed to ILEC voice switch and data traffic routed to CLEC-2 provided DSLAM and on to CLEC-2 data network



CERTIFICATE OF SERVICE

I, L. Elizabeth Bryant, hereby certify that I have this 5th day of April, 2000, caused a true copy of Reply to MCI WorldCom, Inc. to Oppositions to Petitions for Reconsideration and Clarification to be served on the parties listed below via first class mail postage pre-paid:

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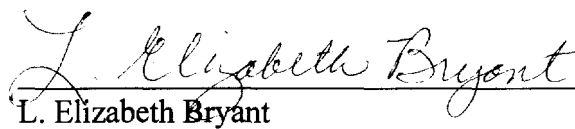
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